

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M WAIKIKI LLC,

Plaintiff,

v.

MARRIOTT HOTEL SERVICES, INC., I.S.
INTERNATIONAL, LLC and IAN
SCHRAGER,

Defendants,

MARRIOTT HOTEL SERVICES, INC.,

Counterclaim-Plaintiff,

v.

M WAIKIKI LLC,

Counterclaim-Defendant.

1:11-cv-06488-BSJ

(Removed from the Supreme Court for
the State of New York, County of New
York Case No. 651457/2011)

DECLARATION OF BRIAN J. FISCHER

BRIAN J. FISCHER, being an attorney duly admitted to practice law in the State of New York, affirms under penalty of perjury that:

1. I am a partner at Jenner & Block LLP, attorneys for defendant and counterclaim-plaintiff Marriott Hotel Services, Inc. (“Marriott”) in the above-captioned matter. I submit this Declaration in support of Marriott’s Motion for Abstention, Remand, and Costs, and as part of Marriott’s opposition to M Waikiki LLC’s Motion to Transfer Venue in the above-captioned matter.

2. I have personal knowledge of the facts and documents described herein, and if called to testify, I would and could competently testify concerning those facts and documents.

3. Attached this Declaration are true and correct copies of the documents cited in the accompanying Memorandum of Law as follows:

- Exhibit A: Summons and Complaint, *M Waikiki LLC v. Marriott Hotel Services, Inc. et al.*, Index No. 651457/2011 (N.Y. Sup. filed May 26, 2011).
- Exhibit B: Counterclaim Complaint, *M Waikiki LLC v. Marriott Hotel Services, Inc. et al.*, Index No. 651457/2011 (N.Y. Sup. filed August 30, 2011).
- Exhibit C: Design and Technical Services and Pre-Opening Agreement dated July 9, 2008, and First Amendment to TSA dated March 13, 2009.
- Exhibit D: Management Agreement dated July 9, 2008, First Amendment to Management Agreement dated March 13, 2009, and Second Amendment to Management Agreement dated November 16, 2010.
- Exhibit E: Owner's Estoppel Certificate dated November 16, 2010.
- Exhibit F: Memorandum of Law in Support of Marriott's Motion to Dismiss the Complaint dated August 1, 2011.
- Exhibit G: Marriott's Notice of Motion to Dismiss the Complaint Pursuant to CPLR § 3211 dated August 1, 2011.
- Exhibit H: Affidavit of Kenneth R. Rehmann dated August 29, 2011 (submitted in support of Marriott's Motion for a Temporary Restraining Order and Preliminary Injunction dated August 30, 2011).
- Exhibit I: Affidavit of Roula McCann dated August 29, 2011 (submitted in support of Marriott's Motion for a Temporary Restraining Order and Preliminary Injunction dated August 30, 2011).
- Exhibit J: Email from Michael Gardner, Bickel & Brewer, to Lindsay C. Harrison, Jenner & Block, LLP, dated August 28, 2011.
- Exhibit K: Affidavit of Gabriela Fontana dated August 29, 2011 (submitted in support of Marriott's Motion for a Temporary Restraining Order and Preliminary Injunction dated August 30, 2011).
- Exhibit L: Affidavit of Laura Modica dated August 29, 2011 (submitted in support of Marriott's Motion for a Temporary Restraining Order and Preliminary Injunction dated August 30, 2011).

- Exhibit M: Affidavit of Michael Rock dated August 29, 2011 (submitted in support of Marriott's Motion for a Temporary Restraining Order and Preliminary Injunction dated August 30, 2011).
- Exhibit N: Memorandum of Law in Support of Marriott's Motion for a Temporary Restraining Order and Preliminary Injunction dated August 30, 2011.
- Exhibit O: Transcript of Proceedings Before Honorable Justice Eileen Bransten in the New York State Supreme Court Commercial Division on August 30 and 31, 2011.
- Exhibit P: Order to Show Cause, Temporary Restraining Order, and Preliminary Injunction dated August 31, 2011.
- Exhibit Q: Owner's Memorandum Regarding the Terminability of the Marriott Hotel Management Agreement and the Revocability of Marriott's Agency Authority Thereunder dated August 30, 2011.
- Exhibit R: Notice of Suggestion of Bankruptcy dated August 31, 2011.
- Exhibit S: Transcript of Proceedings Before Honorable Robert R. Faris in the United States Bankruptcy Court for the District of Hawaii on September 7, 2011.
- Exhibit T: Transcript of Proceedings Before Honorable Robert R. Faris in the United States Bankruptcy Court for the District of Hawaii on September 26, 2011.

Dated: October 14, 2011
New York, New York

Respectfully Submitted,

By: /s/
Brian J. Fischer